

Town of Amherst
Zoning Board of Appeals

DECISION

Applicant: Onesta Properties, LLC c/o Chad O'Rourke
6 University Drive
Amherst, Ma 01002

Owner: Marie E. Desch & Richard Gold
Box 9614
North Amherst, Ma 01059

Date Application filed with the Town Clerk: June 25, 2008

Nature of request: Petitioner seeks a renewal of Special Permit ZBA FY97-02 and to change Condition #5, to remove expiration of the Special Permit upon the change of ownership.

Location of property: 314 Lincoln Avenue (Map 11C, Parcel 327, R-G Zoning District)

Legal notice: Published in the Daily Hampshire Gazette on July 6 & July 16, 2008 and sent to abutters on July 8, 2008.

Board members: Jane Ashby, Hilda Greenbaum, Eric Beal

Submissions: The applicant submitted a site plan showing the design of the driveway and location of the house including access to the dwelling and existing berm adjacent to Lincoln Ave., stamped received on June 25, 2008, a management plan and sample lease agreement.

A letter was submitted from Sydney and George Trez, 306 Lincoln Avenue, written July 19, 2008. They did not support the removal of Condition #5 of the Special Permit.

The Board received a letter from Town Attorney Joel Bard stating that the legal notice in the paper and to abutters was proper, dated July 24, 2008 and received July 30, 2008.

On June 30, 2008 the applicants submitted a letter requesting withdrawal without prejudice of the Special Permit application

Previous Special Permits:

1. Board of Appeals Special Permit, ZBAFY80-87, allowing the conversion of the residence into two apartments subject to conditions;
2. Board of Appeals Special Permit, ZBAFY97-0002, amending ZBAFY80-87 to allow two vehicles per unit and modifying expiration upon change of ownership condition.

Site Visit: July 23, 2008

The Board met with the property owner, Richard Gold, at the site. The following was observed:

- A small non-conforming lot in a neighborhood of single-family dwelling and two family dwellings;

- An existing driveway adjacent to dwelling and parking area at rear of property;
- The position of the existing dwelling related to neighborhood context;
- The existing interior conditions of the basement, first floor, second floor and attic;
- Areas of ingress and egress for each floor of the dwelling.

The petitioner, Chad O'Rourke arrived after the site visit had been completed.

Public Hearing: July 24, 2008

Ms. Ashby asked about the nature of the request and who was the applicant for "Onesta Properties". Richard Gold, the current property owner, indicated that he wished to present information to the Board first; the applicants are Chad O'Rourke and Dan Feldman, who were both in attendance and would speak later.

In terms of the nature of the request, zoning assistant Carolyn Holstein stated that the legal notice to abutters and in the paper did not include a permit renewal request, only a request to remove Condition #5 (permit expiration upon change of ownership). Ms. Holstein reported that Town Counsel had provided an opinion that the removal of Condition #5 request encompassed the renewal request in the legal notice, the two requests were similar, and thus the notice was satisfactory.

The applicants, Daniel Feldman and Chad O'Rourke, stated that they are both local residents and own businesses in the Town of Amherst. They requested the removal of the expiration condition because they are in contract to purchase the property from Mr. Gold, and had been advised by the bank that approval to remove the expiration condition should be resolved prior to closing.

Building Commission Weeks indicated that it is common for an interested party to secure permits prior to purchasing a property. Property owners are not necessarily the applicants.

Mr. Gold provided a history of the site; it was originally a single family house, then occupied by a sorority and a fraternity for many years. He bought the property in 1980 and received a Special Permit for a two-family house at that time. After ownership of 28 years, he now wishes to sell the property. Mr. Gold noted that the previous permits were applied for and approved based on the fact that a two family use was less non-conforming than the previous fraternity uses. The previous permits were conditioned upon expiration of the Special Permit with change of ownership, unless the house was owner-occupied.

In support of the request to remove the expiration condition, Mr. Gold made reference to a Special Permit for 346 Lincoln Ave., issued in March 2008 that changed the expiration condition upon sale of the property. Now, if the property is to be sold, the owner is required to notify abutters and submit a new management plan to the Board for review. Mr. Gold said that this condition would be acceptable, but the applicant requests the removal of the expiration condition altogether.

Mr. Gold made reference to the letter of objection to removal of the expiration condition sent by the next door neighbors. He noted that they had no complaints about the tenants or the management of the property.

Ms. Ashby noted for the record that the Board observed the interior of the property and, in her opinion, it was clean and well maintained.

Ms. Ashby inquired whether the proposed parking plan is the same as the existing configuration and whether the spaces are currently delineated. Mr. O'Rourke stated that the spaces are delineated by wood blocks and the parking will not change.

Ms. Ashby inquired whether the driveway is situated on or over the property line (reference made to the Town GIS map). It was noted that the Town GIS maps are not always accurate for such assessments. Mr. Gold reviewed the site plan submitted by the applicant and noted the location of the property monument boundary that showed the driveway located entirely within the property.

Ms. Ashby stated that backing out of the driveway was blind. This is a specific concern related to the existing conditions due to the fast moving traffic on Lincoln Avenue. The applicants agreed to increase visibility at the end of the driveway.

Ms. Ashby inquired whether the applicants have considered requiring an on-site manager who may be able to prevent or address tenant issues occurrences as they happen.

Mr. O'Rourke said that he would not like to have an on-site manager since he lives close by, but that they would do so if requested by the Board.

Ms. Greenbaum stated that she was not prepared to vote on renewal of the Special Permit since the legal notice emphasized only the removal of the condition of expiration upon change of ownership. She had concern with the small lot size, less than 5,300 sq. ft., conformance with the previous management plan, concern regarding backing out onto the street, and non-conforming property status that may result in conflicts with portions of the Zoning Bylaw, such as setback of the driveway from the dwelling and lack of a turnaround area. Traffic conditions on Lincoln Avenue have increased considerably in the 28 years since Mr. Gold received his first permit.

The Board discussed the nature and extent of previous permits and the number of bedrooms which were permitted and which currently exist. Specifically, were the previous permits allowed for two (2) four-bedroom apartments or two (2) three-bedroom apartments. It was noted that there are currently two (2) four-bedroom apartments.

The Board asked the applicant when the fourth bedroom was created. Mr. Gold explained that the fourth bedroom was created in the basement when he first rented to tenants with special needs and the supervisor of the tenants needed her own room. The extra bedrooms were approved by the Building Commissioner, he said.

Mr. Gold reiterated that the request was essentially a permit transfer due to the upcoming sale of the property.

Ms. Ashby said that she was comfortable transferring the permit based on two (2) three-bedroom units but had reservations about approving two (2) four-bedroom units because the initial permit stated three-bedroom apartments.

The Board continued to discuss the applicability of a condition regarding number of units and number of bedrooms.

Ms. Holstein stated for the record that an abutter from 90 Fearing St., John Fox, telephoned to voice objection to the application; he said that he would rather it be used as a single family dwelling.

Ms. Ashby noted for the record that abutters, Sydney & George Trace, 306 Lincoln Avenue, had submitted a letter objecting to the removal of the expiration upon change of ownership condition.

Ms. Greenbaum asked whether there was a snow removal plan. Mr. Gold said that the tenants are responsible for clearing the driveway and would either shovel or snow blow the driveway and walk.

A copy of the existing lease agreement was distributed to the Board.

Ms. Greenbaum noted objection to the project based on Section 10.38 of the Zoning Bylaw. Ms. Ashby clarified that the applicant is requesting the same use and same density.

Regarding an onsite manager, Mr. Feldman again noted that both of the prospective buyers live in close proximity to the dwelling.

Mr. Gold noted that a tenant manager opens the owner up to liabilities. The property on Lincoln Avenue that no longer has an expiration date to the two-family Special Permit has a large yard that is inviting for large parties. His property is small, and there have not been noise complaints or large parties.

Ms. Ashby asked for a motion to close the hearing.

Mr. Beal moved to close the public hearing. Ms. Ashby seconded the motion, and the Board voted unanimously to close the hearing.

Public Meeting - Discussion:

Ms. Ashby asked the Board members if they had any concerns.

Mr. Beal stated that he was not concerned by the proposed use; however, he felt that the removal of the condition of expiration upon change of ownership was not necessary if the Special Permit were issued to the new owner. He said that he is in favor of keeping the expiration condition.

Ms. Greenbaum stated that she would like the property to revert back to a single family dwelling, owner occupied and perhaps with a supplemental apartment. She also noted concerns over safety, management and non-conformities.

Ms. Ashby asked if there was history of noise complaints or vehicle accidents etc.
Mr. Gold said that there have been none.

Mr. Beal said that he was prepared to vote in favor of the two-family dwelling.

Ms. Ashby stated her intention to vote in favor, but noted that backing out of the driveway did remain a concern to her

Building Commission Weeks reminded the Board that if the application request is not approved, the existing Special Permit will remain in place and the owner would not be able to sell the property. Ms. Greenbaum continued to state that she was unwilling to approve the application based on Section 10.38 of the Bylaw and safety issues.

At the recommendation of Building Commissioner Weeks, the Board discussed whether certain conditions could be created which would allow a vote in favor of the request.

The Board then created the following possible conditions: limiting the dwelling units to 3 bedrooms, keeping the expiration of the permit upon sale, notification to abutters of an on-site property manager and his/her telephone number, continued maintenance of the exterior, including paint and landscaping.

The Board asked the applicant to revise the management plan and submit a sample lease that they will use in the future after Mr. Gold's lease runs out.

Mr. Beal made a motion to continue the public meeting to August 12, 2008. Ms. Ashby seconded the motion and the Board voted unanimously to continue the public meeting to August 12, 2008.

Public Meeting – Zoning Board Decision

Prior to the continued hearing, the Board received a letter from the applicant dated July 30, 2008 requesting withdrawal of the application without prejudice.

In addition, the Board received a written opinion from the Town Attorney, Joel Bard, dated July 24, 2008 and received July 30, 2008. The opinion mirrored the verbal report given by Ms. Holstein at the hearing on July 24, 2008.

The Board discussed the letter requesting withdrawal without prejudice in conjunction with the Town Attorney's letter.

Ms Ashby wanted to make it clear for the record that she would approve the withdrawal request, but found the applicant's reason for withdrawal (incomplete legal notice) not applicable. The Town Attorney had made it clear that the public notice to the press and abutter included both the renewal of the permit and the elimination of the "expiration upon sale" condition. Abutters and interested parties had adequate notice to the change or participate in the hearing, she said.

Ms. Greenbaum made a motion to APPROVE the request to withdrawal without prejudice. Mr. Beal seconded the motion, and vote was unanimous to approve the applicant's request to withdraw without prejudice the Special Permit application to renew Special Permit ZBA FY2008-000037 and modify its conditions.

JANE ASHBY

HILDA GREENBAUM

ERIC BEAL

FILED THIS _____ day of _____, 2008 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2008.
NOTICE OF DECISION mailed this _____ day of _____, 2008
to the attached list of addresses by _____, for the Board.